



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**KERRS CREEK, L.L.C.**

**(No VPDES Permit )**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), between the State Water Control Board and Kerrs Creek, L.L.C., for the purpose of resolving certain violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "STP" means sewage treatment plant.
7. "Kerrs Creek" means Kerrs Creek, L.L.C. (managing member Mr. Al Sharp), which owns and operates the Kerrs Creek STP.
8. "Facility" means the Kerrs Creek, L.L.C. STP located in Rockbridge County, Virginia.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0088960, which became effective April 3, 2000 and expired April 3, 2005.
11. "NOV" means Notice of Violation.
12. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
13. "PER" means preliminary engineering report.
14. "O&M" means operations and maintenance.
15. "CTO" means certificate to operate.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Permit and the Regulation required the former Facility owner to submit an application for reissuance of the Permit by October 5, 2004.
2. On March 21, 2005, Kerrs Creek, L.L.C. bought the Facility. Neither the former owner, nor Kerrs Creek provided DEQ with either a Change of Ownership form for the VPDES Permit in a timely manner or provided a complete VPDES reissuance application, financial assurance mechanism, and closure plan as required by the Permit, laws and regulations. On April 3, 2005, the Permit expired.
3. On April 19, 2005, DEQ received from Kerrs Creek a VPDES permit reissuance application.
4. On April 25, 2005, DEQ returned Kerrs Creek's permit application as incomplete and provided comments that needed to be addressed before the application could be deemed complete.

5. DEQ issued NOV No. W2005-05-V-0016 on May 10, 2005, to Mr. Al Sharp, managing member of Kerrs Creek for unpermitted discharges from the Facility since the Permit expired on April 3, 2005, and late submittal of a VPDES reissuance application.
6. DEQ issued NOV No. W2005-06-V-0002 on June 9, 2005, to Mr. Al Sharp, managing member of Kerrs Creek for unpermitted discharges from the Facility since the Permit expired on April 3, 2005.
7. On June 24, 2005, DEQ met with representatives of Kerrs Creek in an informal conference to discuss the May 10, 2005 and June 9, 2005, NOVs and resolution of the violations. The June 24, 2005, meeting included discussions of the Facility operations and the need for a plan and schedule of corrective actions to return the Facility to compliance with final effluent limitations. Kerrs Creek indicated it was in agreement with entering into an Order to address the compliance issues.
8. DEQ issued NOV No. W2005-07-V-0007 on July 19, 2005, to Mr. Al Sharp, managing member of Kerrs Creek, for unpermitted discharges during May 2005 (Permit expired April 3, 2005).
9. On October 3, 2005, DEQ received a revised VPDES permit application. DEQ deemed the application complete on October 25, 2005. However, the application did not include an approvable financial assurance mechanism and closure plan, and as such DEQ could not proceed with the issuance of a permit.
10. DEQ issued NOV No. W2006-03-V-0001 on March 17, 2006, to Kerrs Creek, L.L.C. for unpermitted discharges during the period June 2005 through February 2006.
11. On April 14, 2006, DEQ received a complete and approvable financial assurance mechanism and closure plan for inclusion in the permit application package.
12. On April 14, 2006, DEQ received Kerrs Creek's proposed schedule of compliance for the upgrade of the Facility to meet final effluent limitations. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Kerrs Creek and Kerrs Creek agrees, to perform the actions described in Appendix A and Appendix B of this Order. In addition, the Board orders Kerrs Creek, and Kerrs Creek voluntarily agrees, to pay a civil charge of **\$11,500 within 30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Kerrs Creek, L.L.C. shall:  
1) indicate that the check is submitted pursuant to this Order, and 2) include its  
Federal Identification Number.

2. During the estimated one and one half year's interim during which Facility improvements will be completed, Kerrs Creek will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Kerrs Creek, for good cause shown by Kerrs Creek, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Kerrs Creek admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Kerrs Creek consents to venue in the Circuit Court of Rockbridge County for any civil action taken to enforce the terms of this Order.
5. Kerrs Creek declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Kerrs Creek to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of

appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kerrs Creek shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kerrs Creek shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kerrs Creek shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Kerrs Creek intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kerrs Creek. Notwithstanding the foregoing, Kerrs Creek agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Kerrs Creek petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Kerrs Creek

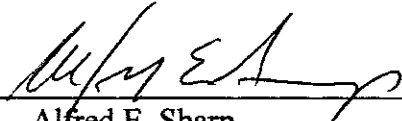
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Kerrs Creek from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Kerrs Creek certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kerrs Creek to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Kerrs Creek
13. By its signature below, the Kerrs Creek, L.L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 8, 2006.

  
R. Bradley Chewing, Regional Director  
Department of Environmental Quality

Kerrs Creek, L.L.C. voluntarily agrees to the issuance of this Order.

By:   
Alfred E. Sharp

Title: Member/Manager Kerrs Creek, L.L.C.

Date: 6/30/06

Commonwealth of Virginia

City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this

30th day of June, 2006, by Alfred E. Sharp,  
(name)

who is managing member of Kerrs Creek, L.L.C., on behalf of said company.

(title)

  
Notary Public

My commission expires: 6/30/06

**APPENDIX A  
KERRS CREEK, L.L.C.  
SCHEDULE OF COMPLIANCE**

1. **Within 90 days** following the receipt of the Permit, Kerrs Creek shall submit to DEQ for review and approval a PER for proposed Facility upgrade to meet Permit effluent limitations and requirements. Kerrs Creek shall respond to any comments regarding the PER **within 30 days** of receipt of written comments.
2. **Within 90 days** of approval of the PER, Kerrs Creek shall submit to DEQ for review and approval the plans and specifications for the approved Facility upgrade and the closure plan for the present Facility. Kerrs Creek shall respond to any comments regarding the plans and specifications and the closure plan **within 30 days** of receipt of written comments.
3. **Within 60 days** of approval of the plans and specifications for the approved Facility upgrade, Kerrs Creek shall begin construction of the approved upgrade.
4. **Within 180 days** of beginning construction of the approved Facility upgrade, Kerrs Creek shall complete construction of the upgrade. Kerrs Creek shall also submit to DEQ for review and approval the O&M Manual and Sludge Management Plan for the approved Facility upgrade. Kerrs Creek shall respond to any comments regarding the O&M Manual and Sludge Management Plan **within 30 days** of receipt of written comments.
5. **Within 30 days** of completing construction of the upgraded Facility, Kerrs Creek shall request a CTO for the Facility. Kerrs Creek shall respond to comments regarding construction deficiencies **within 30 days** of receipt of written comments.
6. **Within 180 days** of completion of construction of the Facility upgrade, Kerrs Creek shall complete the closure of the unneeded units of the STP.
7. Kerrs Creek shall submit semi-annual progress reports to DEQ, with the first report being due **October 10, 2006**. Subsequent Progress Reports will be due by **April 10 and October 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The semi-annual progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order.
  - b. a projection of the work to be completed during the upcoming semi-annual period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.



8. No later than **14 days** following a date identified in the above schedule of compliance Kerrs Creek shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

## APPENDIX B: INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning with the effective date of this Consent Special Order and lasting until the completion of the Plant upgrade as required in Appendix A, Kerrs Creek shall limit and monitor the discharge from outfall 001 in accordance with the Permit except as specified below.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u> mg/l	<u>Weekly Average</u> mg/l	<u>kg/d</u>	<u>Min.</u>	<u>Max.</u>	<u>Frequency</u>	<u>Sample Type</u>
BOD <sub>5</sub>	57.3	65	1.3	1.5	NA	1/M	GRAB
TSS	87	117	1.9	2.7	NA	1/M	GRAB
Ammonia-N	18	18	NA	NA	NA	1/M	GRAB

NA = Not Applicable

NL = No Limit